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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/960,702 | 09/24/2001 | Umrao S. Mayer | 723-1177 | 4292 |

27562 7590 10/07/2003

NIXON & VANDERHYE, P.C.
1100 N. GLEBE ROAD
8TH FLOOR
ARLINGTON, VA 22201

EXAMINER

MARKS, CHRISTINA M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3713

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,702

Applicant(s)

MAYER ET AL.

Examiner

C. Marks

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The Applicant has not incorporated the requirements for the use of trademarks in an application into the specification as required by the Examiner. Thus the specification remains objected to as stated in the first office action:

The use of the trademarks DREAMCAST (page 3, line 20), PLAYSTATION (page 4, line 1), MIDWAY (page 4, line 14), ACCLAIM (page 4, line 14) and ELECTRONIC ARTS (page 4, line 15) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 6, 10-11, 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Armstrong (US Patent No. 6,102,802).

Armstrong discloses the use of a game controller in an electronic game with a plurality of possible actions (Abstract). A method is disclosed that detects user input for requesting an animated action (Column 3, lines 26-42). An adrenaline value is then read from a control element based upon the pressure (level of aggression shown by user) applied to a button in order to control action intensity of images displayed (Column 4, lines 35-48). Such character

Art Unit: 3713

parameters controlled by the action intensity could be the speed in which the character walks or runs (Column 3, lines 10-16). The action is selected from a plurality of possible actions based on the adrenaline value as the more aggressive the player pushes the button, the faster the character will move (Column 3, lines 10-16).

The pressure sensitive switch is an analog switch (Column 3, lines 1-9). The character axiomatically has initial action parameters defined as Armstrong discloses that the action intensity is controlled and changed by the depression of the pressure switch (Column 3, lines 10-14). The initial parameters would then be adjusted based on the adrenaline value as it is controlled by scaling the relative position (level of aggression) of the analog button at the time of the action requested by the player (Column 3, lines 10-17).

Based upon the disclosure of Armstrong detailed above, one of ordinary skill in the art would understand that the parameter axiomatically influences the success or failure of the actions. In Application of the teachings garnished from the disclosure of Armstrong, one of ordinary skill in the art would understand that when applied to a game, for example, wherein the characters are racing, the adrenaline level that controls the parameter associated with the character will also influence the success or failure of the action. Furthering the race example, the parameter of the adrenaline value would control the speed in which the character would run which would most definitely influence the success or failure of the action as the greater the adrenaline value, the greater the speed of the character and the more chance of success in running. Likewise, the less the adrenaline values, the slower the speed of the character and the greater chance of failure in running.

Claims 3-4 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over NHL 2001 (Electronic Arts) in view of Armstrong (US Patent No. 6,102,802).

What Armstrong discloses has been discussed above and is incorporated herein.

Armstrong discloses the method of controlling a video game for use in such a game where a player may need to walk or run based upon situation (Column 3, line 10-17). Armstrong discloses that the controller is used to control varying intensities for character performance (Column 4, line 35-48). Though Armstrong does not explicitly disclose the use of the controller in a sports game, it would be obvious to one of ordinary skill in the art to use the disclosed controller in such a game genre as it is well known that sports games are known to use situations where characters are required to perform with varying intensities as disclosed by Armstrong. Further, Armstrong also discloses that his controller is based upon the use of analog control (Abstract) and thus easily could be used in games supporting the analog control feature.

NHL 2001 is a game that supports analog control and thus could easily incorporate the teachings of Armstrong wherein pressure sensitive means could be used to control the intensity of character movement. Furthermore, NHL 2001 incorporates a momentum feature based upon character movement that can further affect game play (NHL 2001, Plumb, paragraph 2). As this momentum is a changing parameter of the game and one of ordinary skill in the art would understand the relation between momentum and intensity, it would have been obvious to mimic that of real sports events and use the intensity control of Armstrong to influence the momentum disclosed in NHL 2001.

Likewise, one of ordinary skill in the art would be motivated to apply the teachings of Armstrong to the analog controls of NHL 2001 to provide the player with better and more

Art Unit: 3713

realistic control of the available character options. One of ordinary skill in the art would be motivated to make this incorporation in order to provide the player with a more realistic feel of intensity control as disclosed by Armstrong and thus feel more excitement and realism from the game. These goals, that would be achieved by incorporating the more realistic controls of Armstrong, are well known goals to those of ordinary skill in the art of sports games, and thus would provide motivation to incorporate said features, as game designers know that for games to be successful, an important component is realism.

Claims 5, 7-9, 14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over NBA Live 2001 (Electronic Arts) in view of Armstrong (US Patent No. 6,102,802).

What Armstrong discloses has been discussed above and is incorporated herein.

Armstrong discloses the method of controlling a video game for use in such a game where a player may need to walk or run based upon situation (Column 3, line 10-17) such as is required in basketball. Armstrong discloses that the controller is used to control varying intensities for character performance (Column 4, line 35-48). Though Armstrong does not explicitly disclose the use of the controller in a basketball game, it would be obvious to one of ordinary skill in the art to use the disclosed controller in such a game genre as it is well known that basketball games are known to use situations where characters are required to perform with varying intensities as disclosed by Armstrong. Further, Armstrong also discloses that his controller is based upon the use of analog control (Abstract) and thus inherently could be used in games supporting the analog control feature.

NBA Live 2001 discloses the use of an analog control and thus could incorporate the teachings of Armstrong wherein pressure sensitive means could be used to control the intensity of character movement. This intensity then axiomatically would affect the shooting percentage, foul percentage, and blocking percentage of the player as these are well known statistics of player performance that are based partly upon the intensity in which a player performs.

Therefore, one of ordinary skill in the art would be motivated to apply the teachings of Armstrong to the analog controls of NBA Live 2001 to provide the player with better control of the character options and performance. One of ordinary skill in the art would be motivated to make this combination in order to give the player a more realistic feel of intensity control as disclosed by Armstrong and thus feel more excitement and realism from the game. These goals, that would be achieved by incorporating the more realistic controls of Armstrong, are well known goals to those of ordinary skill in the art of sports games, and thus would provide motivation to incorporate said features, as game designers know that for games to be successful, an important component is realism.

Response to Arguments

Applicant's arguments filed 10 August 2003 have been fully considered but they are not persuasive.

Regarding Applicant's argument that Armstrong does not teach or suggest adjusting at least one player parameter related to the selected animated action based on the adrenaline value, wherein the parameter influences the success or failure of the action represented by the selected animated action," the Examiner respectfully disagrees. As stated above, based upon the

Art Unit: 3713

disclosure of Armstrong detailed above, one of ordinary skill in the art would understand that the parameter axiomatically influences the success or failure of the actions. In Application of the teachings garnished from the disclosure of Armstrong, one of ordinary skill in the art would understand that when applied to a game, for example, wherein the characters are racing, the adrenaline level that controls the parameter associated with the character will also influence the success or failure of the action. Furthering the race example, the parameter of the adrenaline value would control the speed in which the character would run which would most definitely influence the success or failure of the action as the greater the adrenaline value, the greater the speed of the character and the more chance of success in running. Likewise, the less the adrenaline values, the slower the speed of the character and the greater chance of failure in running.

Regarding Applicants arguments that there is not a suggestion in NHL 2001 or NBA Live 2001 to use the analog control in the manner defined above, the Examiner respectfully disagrees. One of ordinary skill in the art understands the purpose of analog control in video games is to provide a greater range of control. Both games are equipped to handle analog control and the game controller of Armstrong is disclosed to be an analog controller. The Examiner states that motivation lies in the fact that by incorporating that which is disclosed by Armstrong, the games would present an even further level of realism and thus would be more desirable to a consumer. Further, the argument by Applicant is conclusionary and no specific examples relating to the language of the claims were given to support that which the Applicant is broadly ascertaining. The argument is just a general statement ascertaining that it would not be obvious and thus it is not persuasive.

Conclusion

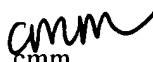
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on (703)-308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.


Cmm
October 2, 2003


Teresa Walberg
Supervisory Patent Examiner
Group 3700